

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1876 OF 2024

Dnyaneshwar Ramchandra Jadhav

.. Petitioner

Versus

Late Yesodabai Keshavrao Thorat (Deshmukh)

Since Raju Dinkar Deshmukh and Ors.

.. Respondents

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- Mr. P.P. Goyal, Advocate for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 26, 2024.

P.C.:

- 1.** Heard Mr. Goyal, learned Advocate for Petitioner.
- 2.** The present Writ Petition is filed to challenge the order dated 15.09.2023 passed by the learned District Judge in Review Application No.14 of 2016. Review Application is filed for seeking review of the judgment of the District Court passed on merits in Civil Suit No.379 of 2008 which was decided on 23.12.2010. Review Application is filed in the year 2016 i.e. six years after the date of the decision of the District Court.
- 3.** Apart from the delay, the ground for filing the Review Application is shocking. Before I delineate to that ground it needs to be mentioned after ascertaining the same from Mr. Goyal that the judgment in Appeal passed by the District Court has become absolute

and final. No challenge is preferred against the said judgment and the Review Applicant has filed Review Application in the year 2016 and the same is now dismissed.

4. It is the contention of the Review Applicant that he was made a party in the Appeal proceedings filed by the legal heirs of the original Defendant. Record indicates that the judgment delivered in Appeal is also part of execution proceedings namely Execution Petition No.99 of 2011 against the Judgment Debtors including the Review Applicant. Review Applicant has filed the Review without challenging the decree on the ground that he was infact a minor in the year 1963 when the sale deed was executed. He would submit that allowing the sale deed by the learned Trial Court and upholding the decree of the learned Court was therefore incorrect. All this is on merits without challenging the decree. In that case, I have impressed upon Mr. Goyal that the remedy of the Applicant would be to file a substantive Appeal, if so permissible in law against the decree of the learned Trial Court having been upheld by the District Court. Review Application cannot be a ground for the Review Applicant to stall execution proceedings and seek substantive orders on merits.

5. He would submit that against the execution proceedings, the Review Applicant approached this Court by filing Writ Petition No.1786 of 2003 and this Court directed the Applicant to file Review

before the District Court and therefore Review Application is filed.

6. Mr. Goyal has drawn my attention to the order dated 24.06.2016 passed in Writ Petition No.1786 of 2013. All that the order states is that the delay for filing the Review is condoned by the Court and nothing more. It does not direct the Review Applicant to file Review Application before the Trial Court. Review Applicant has filed the Application on his own accord. The learned Trial Court after considering the above position has returned cogent reasons on the basis of the submissions made by both the parties on the basis of the record and proceedings passed a reasoned order. These findings are enumerated in paragraph Nos.8 to 11 of the order dated 15.09.2023.

For convenience, they are reproduced below:-

“8] As stated earlier, it is the specific case of the applicant that at the time of execution of the sale deed dated 08/01/1963, by his natural guardian and defacto guardian, in favour of Yashodabai Thorat, he was minor aged about 3 years. That time he was owner of the suit property. The sale deed was executed without obtaining the permission from the District Court. The applicant stated that the sale deed dated 08/01/1963 itself is illegal and void ab-initio. Therefore, the decree and order passed in further litigation on the basis of the said sale deed is not binding upon him.

9] From perusal of the record, it seems that, the present applicant has opportunity to raise the issue of minority in a earlier litigation, in which he was the party, but he failed to do so. In Regular Civil Suit No.1836/1992, the present applicant was one of the plaintiff and the suit was filed for seeking the relief of cancellation of the sale deed dated 08/01/1963. In the said suit, the present applicant had opportunity to take the plea of minority. However, he failed to take the plea of minority and the sale deed was challenged on the other ground. At that time, applicant was aged about 32 years. Even the present applicant has adduced his oral evidence in a suit. As stated earlier, the Regular Civil Suit No.1836/1992 came to be dismissed on 15/11/1998 and the decree attained the finality.

10] It is pertinent to note that, thereafter, the owner Aniruddha Bhalerao filed Civil Suit No.416/1999 against the father of plaintiff for possession of the suit property. After the death of father of plaintiff, applicant along with other legal heirs were brought on record. When the applicant was brought on record, he was aged about 37 years. Even the present applicant has not taken the plea of the minority in a Civil Suit No.416/1999. As no such plea was taken, there was no issue framed regarding the minority of the present applicant in a Civil Suit No.416/1999. As stated earlier, the said suit came to be decreed. The judgment and decree was challenged by Kalawati Jadhav and Samil Jadhav in a Civil Appeal No.379/2008. In the said appeal, the present applicant was respondent No.2. I have gone through the Judgment of this court, in a Civil Appeal No.379/2008 dated 23/12/2010. In the entire judgment, there is no reference of the minority of the applicant. Therefore, question of review of the judgment on the point of minority of the applicant does not arise. As stated earlier, the applicant has taken the first time plea of the minority in a Civil Application No.06/2012 filed before the Small Causes Court.

11] As per Sections 14 and Order XLVII of the Code of Civil procedure, review application of the order and judgment of the appellate court is not permissible. On this ground also the application of the applicant is not maintainable. Hence, the following order.”

7. From the above it is clear that Original Suit was filed in the year 1992. Though the Suit was filed for seeking relief of cancellation of the sale deed dated 08.01.1993, the Review Applicant had the opportunity to take his plea of minority therein, but the sale deed was challenged on other extraneous grounds. At the time of filing of the Suit, Review Applicant was 32 years old. He adduced evidence on merits, resultantly leading to dismissal of Regular Civil Suit No.1836 of 1992. It is seen that the decree has become absolute and attained finality. It is further seen that the said decree was incidentally appealed against not by the Review Applicant, but other contesting Defendants.

8. The learned Trial Court upheld the decree and in that view of the matter, there is no right accrued to or enuring to the benefit of the Review Applicant to file the Review Application under the provisions of Section 14 read with Order XLVII of the Code of Civil Procedure, 1908. Such filing of the Review Application against the judgment of the Appellate Court is not permissible in law. The Review Application was not maintainable at all, but was also an abuse of the due process of law by the Review Applicant. It has been dismissed comprehensively on merits with reasons. Such dismissal cannot and ought not to have been unconditional. Such Review Applicant deserved to have been dismissed with exemplary costs. What the Trial Court has not done, this Court shall now do.

9. In the facts and circumstances of the present case as observed above, I am of the clear opinion that the Review Applicant be therefore directed to pay exemplary costs for filing such Application. Costs of Rs.10,000/- are directed to be paid to the Kirtikar Law Library, High Court, Mumbai. Costs as directed shall be paid within a period of two weeks from today.

10. With the above directions, Writ Petition is dismissed.

11. Put up for compliance on **11th March, 2024 at 02:30 p.m.**

[MILIND N. JADHAV, J.]

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